No. 07-792

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SUPREME COURT, U.S.

In The Supreme Court of the United States

JOHN CRANE INC.,
Petitioner,

v.

WANDA T. JONES,
Administratrix of the Estate of
GARLAND F. JONES, JR., Deceased,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF VIRGINIA

BRIEF IN OPPOSITION

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NATURE OF THE CASE AND MATERIAL PROCEEDINGS

John Crane asks this Court to exonerate manufacturers from general maritime product liability actions by revisiting, for the fourth time, the contours of its decision in *Executive Jet*. But these contours are already well-defined, particularly for cases like this one involving injuries on vessels on the navigable waters of the United States.

Garland F. Jones, Jr. was diagnosed with malignant mesothelioma caused by asbestos exposure from fabricating, installing, and removing marine gaskets and packing in the engine rooms of ships and submarines during repair and construction work on the navigable waters of the James River at Newport News Shipbuilding and Dry Dock Company. On March 21, 2005, he filed an Amended Complaint alleging maritime claims for negligent failure to warn and strict liability under Restatement (Second) of Torts § 402A, and pendent state law claims of breach of implied warranty and conspiracy against John Crane, Inc. and others. Jones died from mesothelioma on July 26, 2005, and his widow, Wanda Jones, amended and revived the action as a maritime wrongful death case on September 7, 2005.

Before trial, John Crane moved to apply Virginia law rather than maritime law. The trial court adhered to its previous rulings finding maritime jurisdiction in cases involving shipyard workers exposed to asbestos while conducting repair and construction operations on launched vessels on

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navigable waters. The Virginia Supreme Court had already affirmed these jurisdictional rulings once in *Garlock Sealing Techs. LLC v. Little*, 620 S.E.2d 773 (Va. 2005), and the argument in this case occurred against the backdrop of *Little*. *See, e.g, Petition*, at 31a-38a (citing *Little*), 40a ("Rather than rehashing all of the arguments made [in *Little*], the Plaintiff will address two new points raised by John Crane's brief . . . .").

After a three week trial in July 2006, the jury returned a general compensatory verdict of $10,000,000, awarded $400,000 for stipulated medical and funeral expenses, and allocated 34% of the total verdict to John Crane. The court reduced the verdict to $10,000,000. John Crane's share amounted to $3,400,000 plus interest.

John Crane appealed the verdict, *inter alia*, on grounds that the trial court erred in ruling that the case arose under maritime jurisdiction. The Virginia Supreme Court granted John Crane's appeal and unanimously reaffirmed its prior decision in *Little* that tort claims involving shipyard workers injured by inhaling asbestos during the repair and construction of launched vessels on navigable waters may arise under maritime jurisdiction.

STATEMENT OF FACTS

Garland Jones worked as a machine installation worker at Newport News Shipbuilding and Dry Dock Company (the Shipyard) in Virginia from 1963 to 1967. While at the shipyard, the uncontroverted evidence showed, Jones worked on

the USS AMERICA and USS JOHN F. KENNEDY aircraft carriers, and the USS HENRY CLAY, USS JOHN C. CALHOUN, USS SIMON BOLIVAR, and USS QUEENFISH submarines. By the time Jones went aboard these vessels, they had already been launched and were moored adjacent to the shipyard on the navigable waters of the James River in Southeastern Virginia.[1] Jones also performed repair work on the BELGIUM VICTORY, GAINSVILLE VICTORY, MAIDEN VICTORY, NEWCASTLE VICTORY, and GRINNELL VICTORY. *See, e.g.*, *John Crane, Inc. v. Jones*, 650 S.E.2d 851, 588 n.4 (Va. 2007) ("The record shows that Garland Jones' exposure to asbestos occurred while working on new vessels and repairing existing vessels.").

As a machinist, Jones installed and repaired valves, put packing in the valves to prevent or repair leaks, and installed or replaced gaskets in pipes to prevent or repair leaks. He primarily worked in the engine rooms of ocean going vessels and routinely handled asbestos-containing products, including gaskets and packing materials manufactured by John Crane. John Crane's products contained between 50% and 85% asbestos. John Crane never warned Jones that breathing asbestos dust from machining, abrading and grinding its products was dangerous.

In January 2005, Jones was diagnosed with malignant mesothelioma. "Mesothelioma is 'a signal

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[1] In the trial court, John Crane persisted in contending that Jones' exposure occurred "in the dry dock area" of the shipyard. *See Petition*, at 97a. There is no evidence that Jones ever worked on ships in dry dock.

tumor' for asbestos exposure, and there is 'virtually no other cause of mesothelioma.'" *Little*, 620 S.E.2d at 775. The disease "has a latency period of 15 to 50 years or more following the first exposure to asbestos fiber." *Id.* John Crane's causation experts agreed that asbestos caused Jones' mesothelioma. And the evidence at trial demonstrated that Jones was exposed to asbestos on vessels on navigable waters.

Jones filed a product liability action in Newport News Circuit Court against John Crane and others. Prior to trial, John Crane moved to apply Virginia law rather than maritime law. Stipulating that the *situs* test of maritime jurisdiction was satisfied, John Crane argued there was no maritime connection. *Petition*, at 95a-96a. The trial court denied John Crane's motion and held that this case arose under maritime jurisdiction. John Crane appealed this ruling to the Virginia Supreme Court, which unanimously affirmed the trial court and reaffirmed its prior opinion in *Little*.

In its Petition in this Court, John Crane claims it was prejudiced because maritime law and Virginia law "differ radically." *Petition*, at 5. In fact, John Crane notes only two differences: pain and suffering damages, and a different standard of care. With regard to pain and suffering, except for $400,000 specifically awarded for medical and funeral expenses, the bulk of the $10,000,000 verdict was awarded for general compensatory damages. Harmonizing maritime and Virginia law pursuant to *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199, 216 (1996), the trial court instructed the jury, without objection, that it might award damages for

each category set forth under the Virginia Wrongful Death Act, Virginia Code § 8.01-52, as well as damages for Jones' pre-death pain and suffering under maritime law's survival provisions. *See Moragne v. State Marine Lines*, 398 U.S. 375 (1970); *Spiller v. Thomas M. Lowe, Jr. & Assoc., Inc.*, 466 F.2d 903, 909 (8th Cir. 1972); *Dennis v. Central Gulf Steamship Corp.*, 453 F.2d 137, 140 (5th Cir. 1972); *see also Jerome B. Grubart, Inc. v. Great Lakes Dredge &Dock Co.*, 513 U.S. 527, 545 (1995) (noting that "exercise of federal admiralty jurisdiction does not result in automatic displacement of state law"). But the jury's general verdict did not specify what, if any, damages were awarded for Jones' pain and suffering.

With regard to the standard of care, unlike the majority of states, Virginia product liability law imposes a "reason to know" standard of care to manufacturers of products. *Compare Owens-Corning Fiberglas Corp. v. Watson*, 413 S.E.2d 630, 635 (Va. 1992) (adopting Restatement (Second) of Torts § 388's chattel *suppliers* "reason to know" standard, rather than § 395's chattel *manufacturers* "should know" standard), *with Restatement (Third) of Torts: Products Liability*, § 2, comment m (2) (1998) ("An overwhelming majority of jurisdictions supports the proposition that a manufacturer has a duty to warn only of risks that were known or *should have been known* to a reasonable person." (emphasis added)).

Maritime product liability law, like that of most states, applies the second and third Restatements' "should know" standard of care. *See*,

e.g., *East River Steamship Corp. v. Transamerica Delaval Inc.*, 476 U.S. 858, 865-66 (1986) (noting that the Third Circuit adopted the first Restatement standards in *Sieracki v. Seas Shipping Co.*, 149 F.2d 98, 99-100 (3d Cir. 1945), *aff'd on other grounds*, 328 U.S. 85 (1946)); *Gray v. Lockheed Aeronautical Sys. Co.*, 125 F.3d 1371, 1380 (11th Cir. 1997) (relying "on the standard of negligence set forth in the Restatement (Second) of Torts"); *Pan-Alaska Fisheries, Inc. v. Marine Constr. & Design Co.*, 565 F.2d 1129, 1135 (9th Cir. 1977) (adopting Restatement (Second) standards for product liability); *Daigle v. L&L Marine Trans. Co.*, 322 F. Supp. 2d 717, 728 (E.D. La. 2004) (noting in design defect case that the manufacturer "selected the design and *knew or should have known* of any potential hazard"); *Delta Marine v. Whaley*, 813 F. Supp. 414, 418 (E.D.N.C. 1993) (noting that liability for "failure to give an adequate warning will be imposed for civil admiralty claims only upon a showing that the seller *knew or should have known* of the hazard about which it failed to warn"); *Restatement (Second) of Torts*, § 12, § 395, § 398 (1965).[2] Because there was a direct conflict between these two standards in Virginia, the trial court ruled that maritime law trumped and applied the "should know" standard.

John Crane agrees that this ruling was correct if maritime jurisdiction applied. And because the

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[2] *See also Vickers v. Chiles Drilling Co.*, 822 F.2d 535, 538 (5th Cir. 1987) (relying on the second Restatement and observing that courts from the Third Circuit, Ninth Circuit, and Seventh Circuit have done the same); *Glover v. Johns-Manville Corp.*, 525 F. Supp. 894, 904 (E.D. Va. 1979).

"should know" standard is already the standard in the overwhelming majority of states, this conflict will not be an issue in most cases.

PRINCIPLES OF LAW, ARGUMENT, AND AUTHORITIES

Summary

This Court has directly addressed the issues raised by John Crane's Petition in *Sisson* and in *Grubart*. *See Grubart*, 513 U.S. at 541; *Sisson* v. *Ruby*, 497 U.S. 358 (1990). It need not do so yet again. Cases since *Grubart* demonstrate that Federal and State courts understand that the multifactor tests that predominated prior to *Sisson* are too restrictive and should not be used to determine whether a maritime connection exists. Against this case law, John Crane now claims that the pre-*Sisson* multifactor tests are still valid. Alternatively, John Crane argues that, even if the tests themselves are not valid, the results obtained by such tests are still correct and binding. Finally, John Crane argues that the Virginia Supreme Court and the trial court in this case (collectively the Virginia courts) misunderstood and misapplied the *Sisson* test by improperly defining the type of incident involved and by holding that the activity in this case has a substantial relationship to traditional maritime activity.

The Virginia courts properly confined their analyses to the *Sisson* test, and they applied that test properly. Regarding John Crane's first

contention, the Fifth Circuit, which created the original multifactor test in *Kelly v. Smith*, has stated *en banc* that this "approach was rejected by the Supreme Court in *Grubart*." *Coats v. Penrod Drilling Corp.*, 61 F.3d 1113, 1118 (5th Cir. 1995) (*en banc*). Likewise, the Fourth Circuit, which adopted a virtually identical multifactor test in *Oman v. Johns-Manville*, has abandoned *Oman's* test. Since *Grubart*, no Fourth Circuit case analyzing maritime jurisdiction has so much as mentioned *Oman*. *See, e.g., M/V Drema G. Woods v. Johnson*, 97 Fed. Appx. 449, 450 (4th Cir. 2004); *Brock v. Lewis*, 1996 U.S. App. LEXIS 11871 (4th Cir. 1996); *Vodusek v. Bayliner Marine Corp.*, 71 F.3d 148, 154 (4th Cir. 1995); *White v. United States*, 53 F.3d 43, 45 (4th Cir. 1995). Other courts throughout the United States have reached the same conclusion.

Second, application of the pre-*Sisson* multifactor tests does not yield the same results as the *Sisson* test. Though the universe of multifactor results may fit as a subset within the universe of the *Sisson* test's results, multifactor tests have consistently excluded cases that this Court has determined lie within maritime jurisdiction. This is demonstrated by the differing results between this Court's decisions in *Foremost*, *Sisson*, and *Grubart* (employing this Court's test) and the district courts' results in the same cases (employing multifactor tests).

Finally, the Virginia courts properly applied the *Sisson nexus* test by (i) appropriately defining the incident and (ii) focusing on the nature of the activity, not the particular roles or statuses of the

parties. Because there is no error, and because there is no confusion in the Federal and State courts regarding this Court's disapproval of the pre-*Sisson* multifactor tests, this Court should deny John Crane's petition.

I. This Court's General Maritime Jurisdiction Decisions are Clear And Need Not be Revisited Yet Another Time.

A. Background.

For almost two centuries, the "traditional test for admiralty tort jurisdiction asked only whether the tort occurred on navigable waters. If it did, admiralty jurisdiction followed; if it did not, admiralty jurisdiction did not exist." *Grubart,* 513 U.S. at 531-32 (citing *Thomas v. Lane*, 2 Sumn. 1, 23 F. Cas. 957, 960 (No. 13902) (CC Me. 1813) (Story, J., on Circuit)); *Sisson*, 497 U.S. at 360-61; *The Plymouth*, 70 U.S. (3 Wall.) 20, 36 (1866).

Prior to this Court's decision in *Executive Jet*, some federal courts had already begun to push away from the strict locality test. *See, e.g., Chapman v. City of Grosse Pointe Farms*, 385 F.2d 962, 966 (1967) (holding that "jurisdiction may not be based solely on the locality criterion. A relationship must exist between the wrong and some maritime service, navigation or commerce on navigable waters."); *McGuire v. New York*, 192 F. Supp. 866, 871 (S.D.N.Y. 1961) (noting that "[t]his opinion that the finding of some relationship to a vessel be a prerequisite to admiralty jurisdiction is not held solely by the commentators. The cases, with varying

degrees of specificity, have adopted the necessity of a vessel as part of their permanent background" and citing cases).

Thus when it decided *Executive Jet* in 1972, this Court "simply followed the lead of the lower federal courts in rejecting a location rule so rigid as to extend admiralty to a case involving an airplane, not a vessel, engaged in an activity far removed from anything traditionally maritime." *Grubart*, 513 U.S. at 542; *see also Executive Jet Aviation, Inc. v City of Cleveland, Ohio*, 409 U.S. 249, 251-52 (1972).[3] Some commentators and courts, however, thought *Executive Jet* represented a more sweeping departure from this Court's pre-*Executive Jet* jurisdictional calculus than this Court intended. Beginning with the Fifth Circuit in 1973, various courts crafted multifactor tests to help them determine whether a case possessed the requisite maritime connection. *See Kelly v. Smith*, 485 F.2d 520, 525 (5th Cir. 1973); *T. J. Falgout Boats, Inc. v. United States*, 508 F.2d 855, 857 (9th Cir. 1974); *Austin v. Unarco Indus. Inc.*, 705 F.2d 1, 14 (1st Cir. 1983); *Oman v. Johns-Manville Corp.*, 764 F.2d 224,

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[3] Indeed, in approving a *nexus* test, *Executive Jet* acknowledged that the "locality test" "grew up in an era when it was difficult to conceive of a tortious occurrence on navigable waters other than in connection with a waterborne vessel." *Executive Jet*, 409 U.S. at 254. Since then, two sitting Justices of this Court have written that *Executive Jet* should not apply to cases involving waterborne vessels. *See Grubart*, 513 U.S. at 555 (Thomas, J., joined by Scalia, J., concurring); *Sisson*, 497 U.S. at 373 (Scalia, J., joined by White, J., concurring).

226 (4th Cir. 1985).[4] Under these tests, courts engaged in a fact intensive analysis of multiple factors to determine whether the particular facts of the case bore a "significant relationship to traditional maritime activity." *Oman*, 764 F.2d at 227 (citations omitted). The most common factors included "the functions and roles of the parties; the types of vehicles and instrumentalities involved; the causation and the type of injury; and traditional concepts of the role of admiralty law." *Kelly*, 485 F.2d at 525; *see also Oman*, 764 F.2d at 230 (adopting, verbatim, the *Kelly* factors).[5]

In 1982, this Court addressed maritime jurisdiction again in *Foremost Insurance Co. v. Richardson*, 457 U.S. 668 (1982), to attempt to "resolve the confusion in the lower courts respecting

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[4] John Crane cites the additional cases of *Owens-Illinois v. US Dist. Ct.*, 698 F.2d 967, 971 (9th Cir. 1983), *Lowe v. Ingalls Shipbuilding*, 723 F.2d 1173, 1190 (5th Cir. 1984); *Harville v. Johns-Manville Corp.*, 731 F.2d 775, 787 (11th Cir. 1984), *Woessner v. Johns-Manville Corp.*, 757 F.3d 634, 649 (5th Cir. 1985), and *Myhran v. Johns-Manville Corp.*, 741 F.2d 1119, 1123 (9th Cir. 1984), but these are merely reaffirmations of the same tests.

[5] In adopting this multifactor test, the sharply divided *Oman* court overturned a unanimous panel decision that had found maritime jurisdiction in an asbestos case, like this one, involving shipyard workers on vessels in navigable waters. *See White v. Johns-Manville*, 662 F.2d 234, 239 (4th Cir. 1981). *White* had found that the installation of asbestos materials was "clearly essential to the maritime industry" and that the work done by these shipyard workers "bears a 'significant relationship to traditional maritime activity' because the installation of the asbestos products has a direct effect on maritime navigation and commerce." *Id.*

the impact" of *Executive Jet* "on traditional rules for determining federal admiralty jurisdiction." *Id.* at 669. Though affirming that the Court's *nexus* test extended to "determinations of federal admiralty jurisdiction outside the context of aviation torts," *Foremost,* 457 U.S. at 673, this Court determined maritime jurisdiction was appropriate because the "negligent operation of a vessel on navigable waters" bore a "sufficient nexus to traditional maritime activity," *id.* at 674. The Court was not concerned with particular facts, but the general character of the case — one involving the general activity of vessels in navigation. Multifactor tests like those adopted in *Kelly* and *Oman* were much more restrictive than this Court intended, and they were excluding from maritime jurisdiction cases that this Court and traditional maritime jurisprudence placed firmly in admiralty.

This Court again disapproved multifactor tests in *Sisson* when it held that a fire caused by a washer/dryer unit on a pleasure yacht docked at a recreational marina on a navigable waterway fell within maritime jurisdiction. *See Sisson*, 497 U.S. at 360. On review "the parties and various *amici*" suggested that this Court adopt one of the multifactor tests. *Id.* at 367 n. 4. Rejecting this suggestion, *Sisson* expressly disapproved any "narrow" analysis of traditional maritime activity that was defined by the "actual effects on maritime commerce," "the particular facts of the incident in this case," *id.* at 363, or the "particular circumstances of the incident," *id.* at 364. Instead, this Court emphasized a jurisdictional inquiry involving the case's "general character," *id.* at 363,

the "general features of the type of incident involved," *id.*, and "the general conduct from which the incident arose," *id.* at 364. *Sisson's* careful distinction between an analysis based on the "general" features of a case — rather than its "particular" facts — constituted an implicit rejection of any multifactor test that necessarily requires an in-depth analysis into particular facts to ascertain jurisdiction. On jurisdictional questions, *Sisson* counseled courts to look at the general characteristics of the forest, not the particulars of each individual tree.

This Court resolved any doubt about the continued vitality of multifactor tests in *Grubart*. There, a stationary barge secured to the bed of the Chicago River replaced pilings driven into the bed of the river. The pilings were designed to protect a bridge. Approximately seven months after the completion of this project, a freight tunnel near the old work site collapsed and water from the river flowed into the tunnel and flooded buildings in downtown Chicago. *Grubart*, 513 U.S. at 530. Business owners who suffered damages to their landside premises as a result of the flood brought tort suits under Illinois law. The dredging company, however, sought to limit its liability by invoking maritime law pursuant to 46 U.S.C. §§ 30505 and 30511. The district court held maritime jurisdiction did not apply, but the Seventh Circuit, applying *Sisson*, found maritime jurisdiction and reversed the district court.

This Court granted review and reaffirmed *Sisson's* mandate that courts analyze the general

features of cases — rather than particular facts — when applying the nexus test of general maritime jurisdiction. *See Grubart*, 513 U.S. at 538-41, 548. The *Grubart* petitioners, recognizing "that *Sisson* disapproved the use of four-factor or seven-factor tests," argued that the rule in *Sisson* "implicitly left the matter open for cases like this one, where most of the victims, and one of the tortfeasors, are based on land." *Id.* at 544. This Court declined the offer. If the *Sisson* test is satisfied, the Court responded, more restrictive tests such as the pre-*Sisson* multifactor tests would necessarily be satisfied as well. In other words, if the forest fits, the trees in the forest will fit. But there was no need to adopt a test more restrictive than *Sisson's* to exclude land-based parties from admiralty. *Id.* at 544-45. As long as the *Sisson* test was satisfied, "it is not apparent why the need for admiralty jurisdiction in aid of maritime commerce somehow becomes less acute merely because land-based parties happen to be involved." *Id.* at 545.

B. Federal and State Courts Understand that this Court Rejected the Circuits' Pre-*Sisson* Multifactor Tests.

Courts and the maritime community understand this Court's decisions and have noted the demise of the pre-*Sisson* multifactor tests in the wake of *Grubart*. The Fifth Circuit, the originator of the *Kelly* test, noted its downfall in *Coats v. Penrod Drilling Corp.*, 61 F.3d 1113, 1118 (5th Cir. 1995) (*en banc*). Observing that "this circuit formerly applied a multi-factor approach to determine whether there

was a substantial relationship to traditional maritime activity [citing *Kelly*]," the *en banc* court concluded that this "approach was rejected by the Supreme Court in *Grubart*." *Id.* Thus, the Circuit that originated the test no longer uses it.

The Fourth Circuit, too, has abandoned *Oman*'s multifactor test in the wake of *Sisson* and *Grubart*. Only one Fourth Circuit case since 1990 has cited *Oman's* test. But in that case, the court noted the *Oman* test had been applied too restrictively. *See Price v. Price*, 929 F.2d 131, 133-35 (4th Cir. 1991)(finding maritime jurisdiction where a passenger was injured after losing her balance and falling while disembarking from a motorboat on a reservoir that "is used almost entirely for pleasure boating"). Following *Sisson's* guidance, the court reversed the trial court's determination that there was no maritime jurisdiction. *Id.*

No Fourth Circuit case since *Price* has attempted to employ *Oman's* test. To the contrary, in *White v. United States* the court applied the *Sisson* test and did not mention *Oman* at all. *See White v. United States*, 53 F.3d 43, 46 (4th Cir. 1995); *see also Ryan v. United States*, 304 F. Supp. 2d 678, 682 (D. Md. 2003) (applying the *Sisson* nexus test and citing *White*, but not *Oman*). If *Oman* still controls the maritime jurisdiction analysis in the Fourth Circuit, as John Crane seems to contend, it is hard to conceive a reason why the very court that formulated that analysis *en banc* now ignores it.

The Seventh Circuit chastised the district court in *Grubart* for applying a superceded multifactor test instead of the *Sisson* test.

> The district court, although clearly cognizant of the *Executive Jet, Foremost* and *Sisson* trilogy, used a "totality of the circumstances" test, first articulated by the Fifth Circuit seventeen years before *Sisson* was decided, in assessing the existence of admiralty jurisdiction. *Great Lakes Dredge & Dock Co. v. City of Chicago, 1993 U.S. Dist. LEXIS 16256*, No. 92 C 6754, slip op. at 14, (N.D. Ill. Feb. 18, 1993) (hereinafter Mem. Op. & Ord.) (citing *Kelly v. Smith*, 485 F.2d 520, 525 (5th Cir. 1973)). . . . We believe that, following *Sisson*, the jurisdictional inquiry must be much more rigidly structured than this. . . . A court, therefore, may only ask the three [*Sisson*] questions posed above, which we now consider seriatim.

Great Lakes Dredge & Dock Company v. City Of Chicago, 3 F.3d 225, 228-29 (7th Cir. 1993) (emphasis added).

The Virginia Supreme Court noted the demise of the *Kelly/Oman* multifactor tests in *Mizenko v. Electric Motor & Contracting Co., Inc.*, 419 S.E.2d 637 (Va. 1992). There, a landbased pipefitter was injured when he inhaled solvent fumes during repair on a ship docked at a commercial shipyard. The Virginia Supreme Court noted that this "Court has

uniformly held that ship repair is a maritime activity," and held that this activity had "a significant relationship to traditional maritime activity and that Mizenko has asserted a cause of action in maritime tort." *Id.* at 640. The Virginia Supreme Court relied on *Sisson* and did not mention *Oman* at all.

Five years later, the Virginia Supreme Court found maritime jurisdiction in a case involving a passenger who slipped, fell and was injured onboard the James River ferry. *See Matthews v. Virginia*, 482 S.E.2d 810 (Va. 1997). Noting that "[t]he Supreme Court in *Sisson* expressly declined to adopt the *Kelly* test," the court declined to apply the *Kelly* test, as well. *Id.* at 812. Instead, it applied the controlling law as set forth in *Sisson* and *Grubart*.

Finally, the major admiralty treatises have recognized this Court's rejection of the pre-*Sisson* multifactor tests. Professor Schoenbaum writes that *Grubart* "rejected the application of extraneous four or seven factor tests (as developed in the Fifth Circuit) that would have the effect of narrowing admiralty jurisdiction . . . ." 1 Thomas J. Schoenbaum, *Admiralty and Maritime Law* § 3-5, at 104-05 (4th ed. 2001). *Benedict on Admiralty* notes that in *Grubart* "the Court finally disapproved of the four-part and seven-part tests that had been used by many lower courts." 1 Steven F. Friedell, *Benedict on Admiralty* § 171, at 11-9 (Rel. No. 96, April 2005). Finally, Force and Norris comment that "*Grubart* expressly rejected the Fifth Circuit's multi-factor test or any other of the lower court's tests," and they conclude it "would appear that after *Grubart* it is

inappropriate for counsel to rely on or for a court to use the Fifth Circuit's 'multi-factor' test or any test for nexus other than the criteria approved in *Grubart*." 1 Robert Force & Martin Norris, *The Law of Maritime Personal Injuries* § 1:15, at 1-32 (5th ed. 2004).

Whatever confusion may have existed prior to *Sisson* or in its immediate wake, *Grubart* has made it very clear that *Sisson's* "general features" test — not multifactor tests such as the *Kelly / Oman* test — is the appropriate test to determine whether a case satisfies the nexus component of maritime jurisdiction. In the words of one court, *Grubart* "sounded the death knell for *Kelly v. Smith*." *Arch v. Treasure Chest Casino, L.L.C.*, 306 F. Supp. 2d 640, 645 (E.D. La. 2004).

C. *Foremost*, *Sisson* And *Grubart* Also Demonstrate That The Pre-*Sisson* Multifactor Tests Produce Wrong Results.

John Crane next argues that, even if the pre-*Sisson* multifactor tests have been repudiated, the results of the pre-*Sisson* shipyard asbestos cases are still valid. This Court's experience in *Foremost*, *Sisson* and *Grubart*, however, has consistently demonstrated that the pre-*Sisson* multifactor tests and this Court's *Sisson* test produce different results.

The district courts in *Foremost*, *Sisson* and *Grubart* employed multifactor tests and arrived at results diametrically opposed to the results this

Court found when employing the *Sisson* analysis. In *Foremost*, the district court determined that there was no maritime jurisdiction, *see Richardson v. Foremost Ins. Co.*, 470 F. Supp. 699, 700 (M.D. La. 1979), but on review both the Fifth Circuit and this Court determined that maritime jurisdiction existed, *see Foremost Ins. Co.*, 457 U.S. at 670; *Richardson v. Foremost Ins. Co.*, 641 F.2d 314, 316 (5th Cir. 1981). The district court applied the *Kelly* test; the Fifth Circuit and this Court did not.

Likewise, in *Sisson* the district court concluded the "wrong alleged fail[ed] to bear a substantial relationship to traditional maritime activity" based on a "telescope[d]" two-part inquiry derived from "the four-factor test developed in asbestosis cases . . . ." *In re Complaint of Sisson*, 663 F. Supp. 858, 862, 864 (N.D. Ill. 1987) (relying on *Oman v. Johns-Manville Corp.*, 764 F.2d 224, 230 (4th Cir. 1985), *Woessner v. Johns-Manville Sales Corp.*, 757 F.2d 634, 639-41 (5th Cir. 1985), and *Kelly v. Smith*, 485 F.2d 520, 525 (5th Cir. 1973)). Applying the *Sisson* test, this Court found maritime jurisdiction and reversed.

Finally, in *Grubart*, the district court initially acknowledged this Court's opinion in *Sisson*, but then applied a totality test based on *Kelly* and determined that maritime jurisdiction did not apply. *See Great Lakes Dredge & Dock Company* v. *City Of Chicago*, 1993 U.S. Dist. LEXIS 16256, at *19-31 (N.D. Ill. 1993) (noting that the "Fifth Circuit, in the case of *Kelly v. Smith*, 485 F.2d 520, 525 (5th Cir. 1974), has outlined four factors which may be considered in determining the existence of a

substantial maritime relationship"). On review, however, the Seventh Circuit and this Court found maritime jurisdiction after applying the *Sisson* test.

Thus in all three cases the district courts applied not only the wrong test, but also arrived at the wrong result. Applying a multifactor analysis in a shipyard asbestos case, likewise, yields the wrong results. Accordingly, the results in *Kelly, Oman* and the other shipyard asbestos cases no longer control.

D. *Sisson* And *Grubart* Corrected the Course of Maritime Tort Jurisdiction.

Sisson and *Grubart* counseled courts to focus the nexus inquiry on fringe cases, not core, vessel-related maritime cases. *Executive Jet* was not intended to radically change the bounds of maritime tort law; it was intended to put a limit on cases at the fringes of maritime jurisdiction such as those involving aircraft and swimmers. *See Executive Jet*, 409 U.S. at 254-56.

This is not a fringe case. Maritime tort cases involving both the release of toxic substances on waterborne vessels and the repair and construction of launched vessels have long fallen at the core of maritime tort jurisdiction. *See Just v. Chambers*, 312 U.S. 383, 385 (1941) (stating in a maritime tort case involving carbon monoxide poisoning of a passenger that "[t]here is no question that there was a maritime tort"); *John Baizley Iron Works v. Span*, 281 U.S. 222, 232 (1930) ("Repairing a completed ship lying in navigable waters has direct and

intimate connection with navigation and commerce as has been often pointed out by this Court."); *Messel v. Foundation Co.*, 274 U.S. 427, 433 (1927) ("The [repair] work in which plaintiff was engaged at the time he was injured was maritime in its nature); *Robins Dry Dock & Repair Co. v. Dahl*, 266 U.S. 449, 457 (1925) (noting "[t]he alleged tort was maritime, suffered by one doing repair work on board a completed vessel."); *Great Lakes Dredge & Dock Co. v. Kierejewski*, 261 U.S. 479, 480 (1923) (finding maritime jurisdiction in a wrongful death case involving a boilermaker making repairs "upon a scow moored in the navigable waters of Buffalo River"); *Grant Smith-Porter Ship Co. v. Rohde*, 257 U.S. 469 (1922) (finding maritime jurisdiction in a tort case involving a launched vessel under construction, and creating and applying the "maritime but local" doctrine). Each of these cases involved vessel-related injuries of the same character and type involved in this case. And in each case, this Court found the claim fell squarely within maritime jurisdiction.

Sisson and *Grubart* refocused courts on the situs prong for most vessel related torts. The petitioners in *Grubart* complained that "*Sisson* is being given too expansive a reading" and that, under that reading, "virtually 'every activity involving a vessel on navigable waters' would be 'a traditional maritime activity sufficient to invoke maritime jurisdiction.'" *Grubart*, 513 U.S. at 542. This Court, however, did not find this to be "a fatal criticism." *Id.* Noting that it "has not proposed any radical alteration of the traditional [pre-*Executive Jet*] criteria for invoking admiralty jurisdiction in tort

cases," this Court observed it "has simply followed the lead of the lower federal courts [prior to *Executive Jet*] in rejecting a location rule so rigid as to extend admiralty to a case involving an airplane, *not a vessel*, engaged in an activity far removed from anything traditionally maritime." *Id.* (emphasis added).[6] *Grubart* continued, agreeing that though its "cases do not say that every tort involving a vessel on navigable waters falls within the scope of admiralty jurisdiction no matter what, they do show that ordinarily that will be so." *Id.* Concluding, *Grubart* clarified: "Although the existing case law tempers the locality test . . . . it *reflects customary practice in seeing jurisdiction as the norm when the tort originates with a vessel in navigable waters, and in treating departure from the locality principle as the exception.*" *Id.* at 547 (emphasis added). Indeed, two concurring Justices wrote that the *situs* test, alone, should control in vessel-related cases. *See id.* at 555 (Thomas, J., joined by Scalia, J., concurring). Thus this Court corrected the course of maritime jurisdiction by counseling lower courts to return to the *situs* test as the primary, but not sole, consideration in cases involving vessels on navigable waters.

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[6] John Crane apparently misunderstands the context of this statement. Discussing this language from *Grubart*, John Crane concludes that "at the time *Grubart* was decided, the pre-existing jurisprudential framework for applying maritime included the *Oman* result . . . ." *Petition*, at 19. But the cases *Grubart* was actually referring to were the pre-*Executive Jet* cases whose lead *Executive Jet* followed in adopting the nexus requirement; not *Oman* and the other post *Executive Jet* multifactor cases. *See Executive Jet*, 409 U.S. at 255-59 & n.6 (citing pre-*Executive Jet* lower federal court cases advocating a *nexus* prong be added to the strict locality test).

II. The Virginia Supreme Court Did Not Err in Determining that this Case Meets the Requirements for Maritime Jurisdiction.

John Crane finally contends that the Virginia courts misapplied the current maritime jurisdictional analysis. John Crane is wrong. This case falls squarely within maritime jurisdiction under the *Sisson* test. First, this case meets the predominating *situs* requirement because the injury occurred on navigable waters. Second, the case is not excluded from maritime jurisdiction as a fringe case under the *Sisson nexus* test because (1) the "'general features of the type of incident involved,'" in this case had "'a potentially disruptive impact on maritime commerce;'" and (2) the "'general character' of the 'activity giving rise to the incident' shows a 'substantial relationship to traditional maritime activity.'" *Grubart*, 513 U.S. at 534 (quoting *Sisson*, 497 U.S. at 363, 364 n.2, 365). Because John Crane stipulates that this case meets the *situs* requirement, *Petition*, at 20-21, the Respondent will analyze only the nexus requirement.

A. The General Features of the Type of Incident In This Case Had a Potentially Disruptive Impact on Maritime Commerce.

The Virginia courts properly applied the first prong of the *Sisson nexus* test. Under that prong, the "general features of the type of incident involved" must have a "potentially disruptive impact on maritime commerce." *Id.* Under this Court's

guidance, the "*type* of incident" — not the particular incident at issue in the case — controls. *Id.* And the type of incident is to be described "at an intermediate level of possible generality." *Id.* at 538.

John Crane claims the Virginia Supreme Court erred by defining the impact, rather than the incident, at an intermediate level of generality. *See Petition*, at 21. But the opinion's definition of the type of incident refutes this argument. According to *Jones*, the type of incident involved here was "inhalation of asbestos fibers while engaged in the repair and construction of vessels on navigable waters." *Jones*, 650 S.E.2d at 854. This definition clearly is focused, not on the impact of Jones' injury on maritime commerce, but on the type of incident. And it comports with the level of generality exemplified by this Court in *Foremost, Sisson*, and *Grubart*. *Compare Grubart*, 513 U.S. at 539 (defining the incident as "damage by a vessel in navigable water to an underwater structure"); *Sisson*, 497 U.S. at 362 (defining the incident as a "fire that began on a noncommercial vessel at a marina located on a navigable waterway"); *Foremost*, 457 U.S. at 674-75 (defining the incident as a vessel collision on navigable waters).

The next step is to determine whether this type of incident has 'a potentially disruptive impact on maritime commerce.'" *Grubart*, 513 U.S. at 534. This step, likewise, "does not turn on the *actual* effects on maritime commerce," but "whether such an incident is likely to disrupt commercial activity." *Sisson*, 497 U.S. at 363 (emphasis in original). So in *Sisson*, this Court did not consider the fire's actual

impact, but its potential impact on maritime commerce. And this Court concluded that the fire had a potential impact on maritime commerce even though "no commercial vessels happened to be docked at the marina" when the incident occurred. *Id.* Likewise, in *Foremost* this Court did not confine its analysis to the impact on commerce in the noncommercial Amite River where the accident actually occurred, but projected the type of incident into the mouth of the St. Lawrence waterway a busy commercial thoroughfare.

The general type of incident here — the inhalation of asbestos fibers while engaged in the repair and construction of vessels on the navigable waters — not only has a potential impact, but *is* having an enormous impact on maritime commerce. Asbestos is so dangerous that the U.S. Navy and all American commercial ship owners have attempted to remove asbestos products from every vessel afloat; otherwise the vessel may be considered unseaworthy. *See, e.g., Miller v. Am. President Lines, Ltd.*, 989 F.2d 1450, 1464 (6th Cir. 1993) (affirming verdict that ship was unseaworthy due to asbestos); *Vaughn v. Ferrell Lines, Inc.*, 937 F.2d 953 (4th Cir. 1991) (same). The presence and release of asbestos on vessels has forced ship owners to incur remediation costs and the related costs of removing a ship from the stream of commerce to perform the remediation. *See generally U.S. v. Ellis*, 1999 U.S. App. LEXIS 2690 (4th Cir. 1999); *Buck v. ACandS, Inc.*, 154 P.3d 750, 754 (Or. Ct. App. 2007) (noting that "Exxon began an asbestos abatement program in 1972" on its fleet of ships, and it was required to hire "asbestos-abatement specialists [who] would

perform the work"). Ship owners have also face rising Protection and Indemnity (P&I) costs, the potential of having asbestos-related injuries excluded from P&I coverage altogether, and the potential of having a maritime lien asserted against the vessel. *See generally Aasma v. Am. S.S. Owners Mut. Prot. & Indem. Ass'n*, 95 F.3d 400, 402 (6th Cir. 1996); *In re United States Lines*, 169 B.R. 804, 809 (Bankr. D.N.Y. 1994); *In re Prudential Lines*, 148 B.R. 730, 736 (Bankr. D.N.Y. 1992); *Am. S.S. Owners Mut. Prot. & Indem. Ass'n v. Alcoa S.S. Co.*, 232 F.R.D. 191, 192 (D.N.Y. 2005); 46 U.S.C. § 31301 (5)(B).

The economic impact arising just from the claims of the people who have been disabled or killed by exposure to asbestos-containing products is staggering. This Court has noted:

> On the basis of past and current filing data, and because of a latency period that may last as long as 40 years for some asbestos related diseases, a continuing stream of claims can be expected. The final toll of asbestos related injuries is unknown. Predictions have been made of 200,000 asbestos disease deaths before the year 2000 and as many as 265,000 by the year 2015.

Ortiz v. Fibreboard Corp., 527 U.S. 815, 822 (1999). The portion of this "stream of claims" that arises from exposure on board ships has already had an enormous impact through claims under the Longshore and Harborworkers' Compensation Act,

see, e.g., New Orleans Stevedores v. Ibos, 317 F.3d 480, 482 (5th Cir. 2003); *Newport News Shipbuilding & Dry Dock Co. v. Stilley*, 243 F.3d 179 (4th Cir. 2001), the Jones Act, *see, e.g., Marine Asbestos Cases v. Am. Hawaiian Cruises, Inc.*, 265 F.3d 861 (9th Cir. 2001) (consolidated case involving 174 cases under the Jones Act, 46 U.S.C. § 688 *et seq.*); *Miller v. American Heavy Lift Shipping*, 231 F.3d 242 (6th Cir. 2000), and under general maritime law, *see, e.g., Dicola v. Am. S.S. Owners Mut. Prot. & Indem. Assoc.*, 158 F.3d 65, 68 (2d Cir. 1998) (noting that "approximately 5,000 Claimants have alleged that they suffered asbestos-related bodily injuries by exposure to asbestos while working aboard Prudential's ships," and seek damages, *inter alia*, under general maritime law). All of this has had a tremendous actual impact on maritime commerce.[7]

In addition to the actual impact, "[u]nsafe working conditions aboard a vessel have consistently been held to pose a potentially disruptive impact upon maritime commerce." *Lambert v. Babcock & Wilcox, Co.*, 70 F.Supp.2d 877, 884 (S.D. Ind. 1999); *see also Weaver v. Hollywood Casino-Aurora, Inc.*, 255 F.3d 379, 386 (7th Cir. 2001) (stating that "without doubt an injury to . . . crew [of a "commercial boat"] disrupts its participation in

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[7] Compare this large scale impact on commerce with the minor potential impact on commerce arising from the incidents in *Sisson*, *Foremost*, and even *Kelly v. Smith*. A fire affecting a limited number of vessels in a marina, a two ship collision even in a busy water way, or a land-based person firing a weapon at a motorboat on a commercial waterway have a comparatively miniscule and short-lived potential impact on maritime commerce.

maritime commerce."); *Alderman v. Pacific Northern Victor, Inc.*, 95 F.3d 1061, 1064 (11th Cir. 1996) ("Unsafe working conditions aboard a vessel under repairs, maintenance, or conversion, therefore, pose a potentially disruptive impact upon maritime commerce."); *Coats,* 61 F.3d at 1119 (noting that "worker injuries, particularly to those involved in repair and maintenance, can have a disruptive impact on maritime commerce by stalling or delaying the primary activity of the vessel"); *Bartel v. A-C Product Liability Trust*, 461 F. Supp. 2d 600, 602 (N.D. Ohio 2006) (finding a seaman's asbestos-related disease claim was governed by maritime law).

Based on this actual and potential impact, the Virginia courts rightly decided that this case meets *Sisson's* first nexus prong.

B. The General Character of the Activity Giving Rise to the Incident Shows a Substantial Relationship to Traditional Maritime Activity.

This case also meets the second prong of the nexus test. The second prong requires the court to "determine whether 'the general character' of the 'activity giving rise to the incident' shows a 'substantial relationship to traditional maritime activity.'" *Grubart*, 513 U.S. at 534.

John Crane attempts to focus this prong solely on its own negligence and to divorce that negligence — which it narrowly characterizes as the "failure to warn of the use of asbestos fibers in its products that

were placed into the stream of commerce for use by the Decedent," *Petition* at 25 — from anything maritime. Assuming, without conceding, this is the correct characterization of the activity in this case, the limitation of John Crane's activity to land-based behavior is fundamentally wrong for at least two reasons.

First, John Crane's argument assumes its negligence stopped when its products were put into the stream of commerce. But "the fact that the defective product was manufactured on land or the wrongful act occurred on land is of no significance" in a maritime action. 1 Thomas J. Schoenbaum, ADMIRALTY AND MARITIME LAW § 3-11, at 143 (4th ed. 2004). Admiralty courts have long held that a wrongful act is not actionable negligence until it is consummated, or takes effect, upon a victim. *See, e.g., The Plymouth*, 70 U.S. at 36; *Sperry Rand Corp. v. Radio Corp. of America*, 618 F.2d 319, 321 (5th Cir. 1980). If a wrongful act does not actually injure someone, it "furnishes no cause of action; it is *damnum absque injuria.*" *The Plymouth*, 70 U.S. at 36.

John Crane's negligent failure to warn was not limited to a discrete point of manufacture in a land-based factory; it continued through to Jones' unwarned use of these products in the engine rooms of ships on navigable waters. *See, e.g., Smith v. Pan Air Corp.*, 684 F.2d 1102, 1107, 1111 (5th Cir. 1980) ("In products liability cases . . . the place where the negligence or wrongful act occurs is not decisive. The place injury occurs . . . [is] more significant."); *Jig The Third Corp. v. Puritan Marine Ins.*

Underwriters Corp., 519 F.2d 171, 174 (5th Cir. 1975) (holding maritime jurisdiction applied "even though the conduct complained of may have been negligent construction or defective design and may have occurred ashore"); *Sears, Roebuck & Co. v. Am. Pres. Lines, Ltd.*, 345 F. Supp. 395, 402 (N.D. Cal. 1971) ("Admiralty jurisdiction is proper even though the negligent act occurs on land" if the "damage was inflicted at a point within admiralty jurisdiction.").

John Crane stipulates its negligence was consummated on a vessel in navigable waters. *See Petition*, at 20 (stipulating exposure on a vessel on navigable waters under the *situs* prong). That is where John Crane's wrongful act became actionable negligence. To be sure, it was only at that point that John Crane became a putative tortfeasor.

Second, John Crane's behavior gave rise to the quintessential maritime product liability action. *See East River S.S. Corp. v. Transamerica Delaval*, 476 U.S. 858, 864 (1986) (recognizing product liability in general maritime law); *Jig The Third Corp.*, 519 F.2d at 173 (affirming verdict for negligent design of "4 1/2-inch, cold-rolled steel shaft"); *Watz v. Zapata Off-Shore Co.*, 431 F.2d 100, 115 (5th Cir. 1970) (holding that a land-based shipbuilder had a claim for negligent design and testing of a chain); *Schaeffer v. Michigan-Ohio Navigation Co.*, 416 F.2d 217, 218 (6th Cir. 1969) (recognizing a claim against Westinghouse for negligence, negligent failure to warn, and breach of an implied warranty regarding a dumbwaiter installed on a ship). Following the rule John Crane proposes would eviscerate maritime product liability actions because it would restrict

courts' analyses to a single land-side point in time in the manufacturing process. Such a focus would ensure that virtually no product liability action could ever be filed in admiralty. It would flatly eliminate maritime jurisdiction over all vessel-related torts if the product was manufactured in a land-based factory (as most are). Thus, John Crane's rule would turn the *Sisson* test "on its head, from a test to weed out torts without a maritime connection into an arbitrary exercise of eliminating jurisdiction over even vessel related torts connected to traditional maritime commerce." *Grubart*, 513 U.S. at 542 & n.4.[8]

In the Virginia courts, John Crane attempted to avoid this result by arguing there was a limited exception for products that were manufactured

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[8] John Crane's argument would even eliminate product liability claims by seamen. *See generally Lindstrom v. A-C Prod. Liab. Trust*, 424 F.3d 488, 491 (6th Cir. 2005); *Bartel v. A-C Prod. Liab. Trust*, 461 F. Supp. 2d 600, 602 (N.D. Ohio 2006); *Lambert v. Babcock & Wilcox, Co.*, 70 F. Supp. 2d 877, 880 (S.D. Ind. 1999); *Tritt v. Atlantic Richfield Co.*, 709 F. Supp. 630, 631-32 (E.D. Pa. 1989). John Crane may argue that these cases are different because they involved seamen, not land-based shipyard workers, but this would be a flawed distinction. "Seaman" status is pertinent for certain remedies such as maintenance and cure, unseaworthiness, or Jones Act negligence. But product liability is a general maritime remedy that has never required a finding of seaman status. And uniformity being one of the weighty interests of maritime law, there is no principled reason to treat workers differently when they are exposed to the same negligence in the same maritime *situs*, and develop the same injuries. *See, e.g., Moragne v. States Marine Lines*, 398 U.S. 375, 402 (1970) (noting that "federal admiralty law should be 'a system of law coextensive with, and operating uniformly in, the whole country'").

specifically for maritime use, but it contended its products did not qualify for this exception. *See Petition*, at 100a (John Crane's Memorandum in the trial court arguing "[a]n exception to this rule can be carved out for products made and intended for use specifically in a maritime setting"). To refute this new argument, Plaintiff proffered evidence demonstrating John Crane directly targeted the maritime industry. It characterized and advertised the gasket and packing materials Jones used as "Marine" sealing materials. These products were designed, marketed and sold "directly for the marine industry," and specified for "marine engines and general ship use." John Crane actively solicited approval of its products for Navy service. It advertised its products in marine engineering journals and it boasted of having a "marine liaison engineer" who "work[ed] with naval architects, port engineers, ship engineers and manufacturers of marine equipment." *See generally Petition*, at 63a – 88a (Exhibits attached to Plaintiff's Opposition to John Crane Inc.'s Motion to Apply Virginia Law).

John Crane now seems to disavow this argument and even goes so far as to blame the Virginia courts for analyzing the very issue John Crane raised. *See Petition*, at 26-28. One reading John Crane's Petition in isolation would conclude that the Plaintiff raised this issue and that she misled the Virginia courts into deciding the jurisdictional issue solely on the basis of this "limited exception" argument. This is not true.

The Plaintiff and the Virginia courts were merely responding to a new argument John Crane

made against the backdrop of the Virginia Supreme Court's previous jurisdictional analyses in *Mizenko*, *Matthews*, and *Little*. In fact, the Virginia Supreme Court's opinion in this case first analyzed the two prongs of the *Sisson* test and reaffirmed its prior ruling in *Little*. *See Jones*, 274 Va. at 589. Only then did the Virginia Supreme Court address John Crane's new "limited exception" argument.

John Crane's "limited exception" argument — that "there is nothing particularly maritime about the use of asbestos fibers in fabricating gaskets and packing" — is merely a re-tooling of *Oman's* interpretation of the first *Kelly* factor. *See Petition*, at 25-28; *Oman*, 764 F.2d at 230-31 (noting that the defendant's role and function favored maritime jurisdiction because the defendant provided *marine-specific products*, but the plaintiffs' roles and functions did not favor maritime jurisdiction because their actions were "not unique to maritime service"). But, again, this sort of particularized analysis was rejected by this Court in *Foremost, Sisson*, and *Grubart*.

The subsidiary notion that the plaintiff's or defendant's role must be "unique to maritime service" fails as well. Maintaining a washer/dryer unit, *Sisson*, 497 U.S. at 363, pounding pilings into the ground, *Grubart*, 513 U.S. at 539, negligently designing a "4 1/2-inch, cold-rolled steel shaft," *Jig The Third Corp.*, 519 F.2d at 173, or a chain, *Watz*, 431 F.2d at 115, or a dumbwaiter system, *Schaeffer*, 416 F.2d at 218, or, for that matter, guarding against a trip and fall hazard, *White*, 53 F.3d at 47; *Matthews*, 482 S.E.2d at 812, are not "uniquely

maritime" either. Indeed, each of these activities occur more frequently outside a maritime environment. But each arose under maritime jurisdiction because of their general connection to a maritime activity and their occurrence on a vessel on navigable waters. Thus, John Crane's argument that this case does not fit under maritime jurisdiction due to the particular nature of its products or its own function is a reversion to the pre-*Sisson* multifactor tests disapproved by this Court on three previous occasions.

Finally, to the extent John Crane claims that asbestos diseases do not qualify for maritime jurisdiction because of the long latency period between exposure and death, *see Petition*, at 22-23, this Court rejected this argument in *Grubart*, 513 U.S. at 536. There, the petitioners argued that "the damage must be close in time and space to the activity that caused it: that it must occur 'reasonably contemporaneously' with the negligent conduct and no 'farther from navigable waters than the reach of the vessel, its appurtenances and cargo.'" *Id.* at 536. The "demerits of this argument," this Court responded, lay in its "want of textual support for its nonremoteness rule," and in its disregard of the Act's use of "the phrase 'caused by . . . .'" *Id.* Citing *Palsgraph v. Long Island R. Co.*, 162 N.E. 99 (NY 1928), this Court observed that the "classic tort notion" of proximate cause "eliminates the bizarre" and "its use should obviate not only the complication but even the need for further temporal or spatial limitations." *Id.* So, *Grubart* held, there "is no need or justification, then, for imposing an

additional nonremoteness hurdle in the name of jurisdiction." *Id.* at 538.

The jury in this case necessarily found that John Crane's actions proximately caused Jones' injury and death. John Crane did not appeal this finding. So, because it is an established fact — by virtue of the jury's unappealed determination as to proximate causation — that Jones' injury was proximately caused by his exposure to the asbestos-containing products on the vessels he worked on, maritime jurisdiction applies.[9]

CONCLUSION

This Court has made abundantly clear the appropriate test for general maritime tort jurisdiction. State and Federal courts understand the current jurisprudence and do not need another clarification. Based on this Court's clear guidance, the Virginia courts applied the appropriate test and applied it correctly. Accordingly this Court should deny John Crane's Petition.

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[9] Moreover, this latency argument has had no effect on the jurisdictional calculus of asbestos cases brought by seamen under general maritime law even though those cases involved similar latency periods. *See generally Lindstrom*, 424 F.3d at 491; *Bartel*, 461 F. Supp. 2d at 602; *Lambert*, 70 F. Supp. 2d at 880; *Tritt*, 709 F. Supp. at 631-32.

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